

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 188/Lab./AIL/J/2012, dated 30th October 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 14 of 2009, dated 10-8-2012 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Kamaraj Transport Firm, Karaikal and its workman Thiru P. Kaliamoorthy over termination of his service has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT, KARAİKAL

Present : Tmt. R. MARGARET ROSALINE, M.L.,
Presiding Officer, District Judge.

Friday, the 10th day of August 2012

I.D. No. 14/2009

P. Kaliamoorthy Petitioner

Versus

The Managing Partner

M/s. Kamaraj Transport Firm, Karaikal Respondent

This petition coming on 14-6-2012 for final hearing before me in the presence of Thiru K. Kalidason and K. Mahendran, Advocates for the petitioner, Thiru A. Veerapandian, Advocate for the respondent, upon hearing both sides and perusing the case records and having stood over for consideration till this day, this court passed the following:

AWARD

This is a reference made by the Labour Department to adjudicate the following issues:

(a) Whether the dispute raised by Thiru P. Krishnamoorthy against the management of M/s. Kamaraj Transport Firm, Karaikal over his non-employment is justified or not?

(b) If not justified, to what relief, the petitioner is entitled to?

(c) To compute the relief, if any, awarded in terms of money if it can be so computed.

2. The following are the averments found in the claim statement:

The petitioner is the qualified conductor and has been working with the respondent from the year 1989 to March 2009 for the period of 20 years. He was paid daily wages of ₹ 170 excluding batta and he was getting ₹ 350 per day. But the respondent, all of a sudden, terminated the petitioner from his service during March 2009 without fulfilling the conditions under section 25(1) of Industrial Disputes Act. The petitioner has been left without job for the past one year and his family is suffering from starvation. Therefore he approached the Labour Officer, Karaikal. In the said conciliation, the respondent made false allegation stating that the petitioner himself left the service on 26-3-2009 and he was paid a monthly salary of ₹ 1,900. The petitioner is very sincere conductor and he was selected as the Best Conductor for the year 2005 by the City Club of Karaikal. The petitioner was constrained to do the domestic work for the management family. The petitioner has strongly denied the allegation that he left the service on 26-3-2009. Hence the petition.

3. The respondent filed its counter with the following averments:

The very claim that the petitioner is employed under the respondent from 1989 is not true. But he has been employed as a conductor of 15 days duty per month on the salary of ₹ 1,900 per month including batta and other permissible allowances and not at ₹ 170 daily wage and ₹ 350 in all per day. The petitioner has to prove his claim of income alleged as the same is denied by this respondent. This respondent has not terminated the services. Few days before his complaint to the Labour Office, the petitioner voluntarily stopped to come to work. When work suffered because of his absence without information, the respondent was forced to make alternate arrangements when the petitioner was enquired, it was revealed that he was not interested to work under the respondent and he got himself employed with P.R.N. Transports, Karaikal. Since the persuasions of this respondent failed, the matter was dropped at that stage. The petitioner was not sought for employment or reinstatement anywhere including before the Labour Office. His claim has been not in relation to his employment, but only

compensation. That is the position maintained by the petitioner before the Labour Officer and Labour Court. In such circumstances, the termination and refusal to employ, reemployment etc. are out of consideration and beyond the scope of the reference. The claim of the petitioner from the beginning is for gratuity and compensation only and the reference should be confined to this two aspect only. Unfortunately, the reference herein does not disclose the claim about compensation and gratuity. Hence that cannot be adjudicated. Since the petitioner is gainfully employed outside with P.R.N. Transport, Karaikal and there is no refusal to give employment to the petitioner, the question of reinstatement does not arise apart from the fact that such prayer was not made by the petitioner before any forum. The Labour Court has no jurisdiction to decide gratuity disputes and only the competent authority under the Payment of Gratuity Act, 1972 will have jurisdiction to decide the disputes on gratuity. Hence this respondent prays the dismissal of the industrial dispute and thus render justice.

4. *Now the points for determination are:*

(1) Whether the termination of petitioner by the respondent is justifiable?

(2) If so, what are the reliefs, the petitioner is entitled to?

On these pleadings:

5. In order to substantiate his claim, the petitioner examined himself as PW.1 and one another witness as PW.2 and marked Exs.P1 to P6. Through cross-examination of PW.1, Exs.M1 and M2 were marked. On the side of the respondent, one witness has been examined as RW.1 and has not chosen to mark any document.

6. *Point No. 1:*

The contention of the petitioner is that he is a qualified conductor and he had been working in the respondent firm since 1989 till March 2009. His further contention is that he was terminated from the service from the month of March 2009 without any prior notice. During his cross-examination before this court he has deposed that during the year 2009 he stopped from going to his work. He has even deposed that from 26-3-2009 he stopped from going to his work. He has categorically admitted that after stopping from work he had not sought any reemployment. He has also even gone to the extent of saying that the dispute raised before the court is not for getting his job. His contention is that he has raised the present dispute only for getting his due amount from the respondent firm. The respondent has marked the petition filed by the

petitioner in Ex.M1. Even the petitioner himself has admitted that he did not seek any reemployment. The perusal Ex.M1 reveals that he has sought only for payment of gratuity. Therefore, it is evident that this court has no jurisdiction for passing the order for payment of the gratuity. Hence this point is answered accordingly.

Point No.2:

The petitioner's contention is that he seeks the remedy of getting his gratuity amount payable to him by the respondent firm. This court has no empower to pass order regarding this point. The respondent is directed to settle the benefits whatever is due to the petitioner.

In the result, the industrial dispute is dismissed and there is no order as to costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this 10th day of August 2012.

R. MARGARET ROSALINE,
Presiding Officer, Labour Court,
Karaikal.

Petitioner's witnesses :

PW.1 — P. Kaliamoorthy

PW.2 — V.S. Ramalingam

Respondent's witness :

RW.1 — Arumugam

Petitioner's exhibits :

Ex.P1 — 6-6-2011 Attested xerox copy of Conductor's Certificate, dated 15-2-1988.

Ex.P2 — 6-6-2011 Service Certificate, dated 25-12-1996

Ex.P3 — 6-6-2011 Service Certificate, dated 24-9-2001

Ex.P4 — 6-6-2011 Certificate, dated 19-10-2005

Ex.P5 — 6-6-2011 Service Certificate, dated 17-1-2008

Ex.P6 — 6-6-2011 Certificate of Merit, dated 20-10-2005

Respondent's exhibits :

Ex.M1 — 21-9-2011 Letter, dated 4-5-2009 given by the petitioner to the Labour Officer, Karaikal, marked through cross of PW.1.

Ex.M2 — 21-9-2011 Conciliation failure report, dated 30-9-2009, marked through cross of PW.1.

R. MARGARET ROSALINE,
Presiding Officer, Labour Court,
Karaikal.